

106th Congress

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REPORT LANGUAGE

1 The purpose of this legislation is to provide for a source of funding for the
2 development, operation, and maintenance of the Nation's harbors. The legislation
3 establishes a fee for services provided to commercial vessels for port use at harbors within
4 the United States. The legislation also repeals the Harbor Maintenance Tax (HMT),
5 which was the subject of a recent Supreme Court ruling. In that ruling, the Court
6 concluded that the HMT, which imposed a charge based on the value of the commercial
7 cargo being shipped, constituted a tax on goods in export transit and therefore violated the
8 Export Clause of the Constitution. The fee established in this legislation avoids the
9 constitutional infirmities of the HMT. The assessment is a user fee, not a tax: it fairly
10 approximates the harbor benefits and services users receive, and is imposed on the
11 commercial vessel itself, not on the cargo therein.

12 The harbor services required by commercial vessels are generally a function of
13 vessel size, frequency of port use, the operational characteristics of the vessel, and the
14 extent of use of the port system provided for various categories of vessels. These
15 variables were taken into account in determining the amount of the fees to be imposed
16 pursuant to this legislation. For example, the proposed fees take into account the size of
17 the vessel by charging a fee per vessel capacity unit. The frequency of port use is
18 reflected in the calculation by charging a fee based on average port use per voyage. The
19 different operational characteristics of a vessel and extent of use of the port system are
20 reflected in the calculation by charging a different rate of fee for different vessel
21 categories.

22 Commercial vessels using U.S. ports can be divided into four vessel categories
23 based on differences in operational characteristics and their utilization of the port system.
24 These categories are the general category, bulkier category, tanker category, and cruise
25 category. A different fee rate for each vessel category is appropriate because the different

operational characteristics of the vessel categories result in different levels of services required by vessels in each vessel category.

The fees proposed in this legislation fairly approximate the services and benefits vessels in each vessel category receive through port use. In the aggregate, the fees will generate funds annually sufficient to pay the Department of the Army's annual costs of developing, operating, and maintaining the Nation's ports. The intent of the legislation is that the total amount of the fees collected pursuant to this legislation will be available each fiscal year for appropriation to fund the projected total annual expenditures of the Department of the Army for harbor development, operation, and maintenance and that the fees will generate sufficient funds for that purpose.

The fees proposed in this legislation are based on providing service to the U.S. port system as a whole; therefore the fees do not vary from port to port. The approach used in this legislation is a rational one, because the fees are based on service demand from an overall national basis, with each individual port as an integral part of the national port system, from which shippers derive special benefits, both direct and indirect.

Moreover, Federal investment throughout the port system provides vessel operators and cargo owners maximum choice and efficiency by providing alternatives and minimizing costs. Having a nationally based fee is reasonable and clearly recognizes that each port is a part of the whole, national port system.

SECTION-BY-SECTION ANALYSIS

SECTION 1000. SHORT TITLE.

SECTION 1001. HARBOR SERVICES FEE.

This section imposes a fee on services provided to commercial vessels for port use. The amount of the fee imposed is based on vessel category and vessel capacity in accordance with the table set forth in subsection (b). The rate of the fee for vessels in the bulker category is \$0.12 per vessel capacity unit; for tankers, \$ 0.28; for vessels in the general category, \$2.74; and for vessels in the cruise category, \$ 0.12 per vessel capacity unit. It is the intent of this legislation that the fee structure is established in such a way that the aggregate amount of fees imposed by this section in a fiscal year will be sufficient to pay the projected total expenditures of the Department of the Army, subject to appropriations, for harbor development, operation, and maintenance for a fiscal year. If amounts appropriated in any fiscal year are less than the amount collected in fees for the prior fiscal year, then the rate of the fee for each category is to be reduced so as to result in collections not exceeding the total amount appropriated from the Harbor Services Fund for that fiscal year.

1 The fee is imposed on commercial vessels and would be payable by the operator of
2 a commercial vessel upon the first port use by the vessel during a voyage. This recognizes
3 the fact that vessels may stop in more than one U.S. port on any given voyage. Because
4 charging these ships for each port use would discourage multi-port stops within the U.S.,
5 the legislation provides for the collection of a fee only at the first port use on a given
6 voyage, but is calibrated to approximate the services provided to these vessels on an
7 average multi-port voyage.

8 The authority to collect the fees imposed by this legislation is triggered by
9 Congressional action through the appropriations process. The fees may be collected only
10 to the extent provided in advance in appropriations acts. The amounts collected in any
11 fiscal year are to be available for obligation in the following fiscal year only to the extent
12 and in the amount provided in advance in the appropriations act for such fiscal year and
13 are to remain available until expended.

14 The exemptions included in subsection (e) of this section closely mirror the
15 exemptions that were included in Title XIV of the Water Resources Development Act of
16 1986. Pursuant to this subsection, no fee will be imposed for port use by the United
17 States or any agency or instrumentality thereof. Nor would a fee be imposed in
18 connection with port use for intraport movements; for transporting commercial cargo
19 from the mainland United States to Alaska, Hawaii, or any possession of the United
20 States, for ultimate use or consumption in Alaska, Hawaii, or any possession of the United
21 States or for transporting commercial cargo from Alaska, Hawaii, or any possession of the
22 United States to the mainland United States for ultimate use or consumption in the
23 mainland United States; for transporting commercial cargo within Alaska, Hawaii, or a
24 possession of the United States; and for transporting passengers on U.S. flag vessels
25 operating solely within the state waters of Alaska or Hawaii and adjacent international
26 waters.

27 The exemption for port use by the United States preserves the Government's
28 sovereign immunity and its ability to accomplish governmental tasks in ports without
29 interference or administrative burden. The exemptions pertaining to Alaska, Hawaii, and
30 the possessions of the United States acknowledge and protect the peculiar port-
31 dependence of non-contiguous States and possessions of the United States. These states
32 and possessions, unlike the other 48 states, are critically dependent on port shipments.

33 Under subsection (f), the Secretary of the Treasury is required to promulgate
34 regulations regarding collection of the fees. In carrying out this responsibility, the
35 Secretary of the Treasury shall provide for collection of the fees using an on-site collection
36 method as part of the vessel clearance process for foreign vessels, in order to take

1 advantage of the effective collection structure already in place for these vessels. Collection
2 of the fees for all other vessels shall be provided through a lock box approach. Under
3 subsection (g), the Secretary of the Army is required to prescribe any necessary
4 regulations regarding audit and enforcement of collection of the fees, as well as such other
5 regulations as may be necessary to carry out the purposes of the legislation.

6 **SECTION 1002. HARBOR SERVICES FUND.**

7 This section establishes the Harbor Services Fund in the Treasury of the United
8 States and specifies that all fees collected under the legislation be credited to that Fund.
9 This section also requires that any available funds remaining in the Harbor Maintenance
10 Trust Fund as of the date of enactment of this Act be transferred to the newly created
11 Harbor Services Fund. This section authorizes the Congress to appropriate from the
12 Harbor Services Fund, for each fiscal year, such amounts as may be necessary to pay all of
13 the Federal share of the costs associated with construction of general navigation features
14 at harbors within the United States; all eligible operations and maintenance costs assigned
15 to commercial navigation of United States ports; all of the eligible costs of maintaining the
16 Federal dredging capability of the Nation; and the administrative costs incurred by the
17 Secretary of the Army and the Secretary of the Treasury in collecting the fees.

18 In addition, pursuant to subsection (b)(2), an amount of up to \$100,000,000 may
19 be available each fiscal year for the dredging of berthing areas and construction and
20 maintenance of bulkheads associated with a Federally authorized project or to provide
21 credits toward all or a portion of the non-Federal share of project costs of a non-Federal
22 interest for a Federally authorized navigation project at a port where the average amount
23 of the fee collected over three consecutive fiscal years exceeds the average Federal
24 expenditure from the Harbor Services Fund at that port during the same consecutive fiscal
25 years by \$10,000,000.

26 Subsection (c) (1) provides authority for appropriations from the Harbor Services
27 Fund.

28 Subsection (c) (2) provides for a reserve to implement legislation to establish the Saint
29 Lawrence Seaway Development Corporation as a Performance Based Organization.

30 **SECTION 1003. CONFORMING AMENDMENTS.**

31 This section repeals section 210 of the Water Resources Development Act, which
32 provided for authorization of appropriations from the Harbor Maintenance Trust Fund to
33 pay eligible operation and maintenance costs for harbor projects within the U.S., as well as
34 to pay eligible costs for the St. Lawrence Seaway Development Corporation. This section
35 also repeals the HMT imposed by section 1402 of the Water Resources Development Act
36 of 1986.

SECTION 1004. DEFINITIONS.

This section defines the terms used in the legislation.

SECTION 1005. EFFECTIVE DATE.

This section specifies the date the legislation takes effect.